

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Notice of Proposed Rulemaking)	CC Docket No. 96-45
Concerning a Review of the Definition)	
of Universal Service)	

COMMENTS OF VERIZON WIRELESS

Pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, Verizon Wireless submits these comments in the above-captioned proceeding.

SUMMARY

The Commission should adopt the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding the definition of services supported by Universal Service.¹ On the one issue in which the Joint Board could not reach agreement - equal access - the Commission should continue to refrain from imposing equal access on CMRS carriers in any context. Congress has explicitly prohibited the FCC from imposing equal access requirements on wireless carriers.

Even if the FCC could impose equal access, which it cannot under the Telecom Act, equal access does not meet key criteria for being designated a covered service under Section 254. First, because CMRS consumers already have access to long distance service through multiple competitive service providers, equal access cannot be considered an essential service. Second, the Commission will not advance competition or the public

interest by imposing the costs of implementing equal access on CMRS ETCs. Proponents of an equal access obligation are in fact seeking to dampen consumer demand and choice for CMRS service by adding a costly and unnecessary regulatory roadblock in the way of CMRS service in rural areas. In short, defining universal service to include equal access would harm service to the high cost and rural areas of the nation that the USF program is intended to serve.

DISCUSSION

I. Equal Access Is Inconsistent With Section 332(c)(8).

When Congress enacted the Telecommunications Act of 1996,² it amended Section 332 of the Act and made it clear that CMRS carriers cannot be required to provide equal access. Section 332(c)(8) of the Act provides in relevant part:

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services.³

In 1996, the Joint Board recommended that the Commission not include equal access in the definition of universal service. The Commission agreed with the Joint Board's finding that its inclusion would "require [CMRS carriers] to provide equal access in order to receive universal service support...an outcome...contrary to the mandate of section 332(c)(8)."⁴ There has been no change of law that would support repudiation of the Commission's original interpretation of section 332(c)(8).

¹ Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 03-13 (Rel. Feb. 25, 2003).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

³ 47 U.S.C. § 332(c)(8).

⁴ See Federal-State Joint Board on Universal Service, *First Report and Order*, 12 FCC Rcd. 8776, ¶ 78 (1997).

II. Equal Access Does Not Satisfy Key Criteria Of Section 254.

Even if the Commission had the statutory authority to impose an equal access obligation on wireless carriers, the factors set forth in Section 254(c) would bar the Commission from adding equal access to the list of supported services. Section 254(c) directs the Commission to consider whether the telecommunications services at issue: (1) are essential to education, public health, or public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential consumers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and (4) are consistent with the public interest, convenience, and necessity.⁵ An analysis of prongs one and four alone demonstrates why CMRS equal access cannot lawfully be included as a supported service under Section 254.

Access to inter-exchange service is already a supported service, which undermines any argument that *equal* access is “essential” under prong one to education, public health, or public safety. The rapid growth of the consumer demand for wireless service, and particularly bundled packages of services that include long distance, demonstrates that consumers do not lack access to interstate service options. Imposing equal access would do nothing to further education, public health or public safety, let alone be considered “essential” to any of those objectives.

Under prong four, an equal access requirement would not promote the public interest, either indirectly through competition or through direct consumer benefits. According to the Commission’s latest available CMRS competition report, “the CMRS industry [has] continued to experience increased competition, innovation, lower prices for

⁵ 47 U.S.C. § 254(c).

consumers, and increased diversity of service offerings.”⁶ The *CMRS Seventh Report* found that 268 million people, or 94 percent of the total U.S. population, have three or more different operators ... offering mobile telephone service in the counties in which they live.⁷ The wireless industry is highly competitive in rural areas as well, with rural counties now having an average of 3.2 mobile providers, while urban markets have between five or six providers.⁸ All of these pro-consumer developments have occurred *without* an equal access requirement, in response to a competitive marketplace. Equal access is not necessary to bring the benefits of competitive choice to rural consumers.

An equal access obligation could instead *harm* the public interest by reducing competition in rural and high cost areas by driving up carriers’ costs, undermining one of the key goals of Section 254. There are substantial implementation costs associated with equal access, such as switch upgrades, billing upgrades, installation of trunks, and balloting costs. Some wireless carriers are likely not to invest in rural areas if the cost of doing so is increased by equal access capital investment requirements. While it is likely the LEC proponents of this new CMRS obligation may have recovered the capital investment necessary to implement equal access in their switches long ago, wireless carriers would be required to make new capital investments to offer equal access. At least some CMRS carriers will choose not to do so, harming the very residents of rural and high cost areas that the USF is designed to help.

⁶ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Seventh Report*, 17 FCC Rcd. 12,985, 12,988 (2002) (“CMRS Seventh Report”).

⁷ *CMRS Seventh Report* at 13008.

⁸ In the *CMRS Seventh Report*, the Commission found the number of wireless competitors in urban and rural markets to be “remarkably similar.” *CMRS Seventh Report* at 13023.

Customers may suffer additionally from imposition of equal access on wireless ETCs through an increase in the cost they face for long distance service. If wireless ETCs are required to provide equal access they may be less able to negotiate favorable bulk purchasing contracts with inter-exchange service providers, and less able to pass those savings onto consumers. As the Commission has noted, because CMRS providers compete with each other to provide the lowest overall rates for their customers, “they presumably attempt to obtain the lowest rates for toll services from intra-LATA toll and inter-LATA toll carriers.”⁹ The benefits consumers receive from CMRS offerings of bundles of wireless minutes, which often include long distance at no extra charge, will be lost with an equal access requirement.

Regulatory parity is not a legitimate justification for imposing equal access as a supported service in order to qualify for universal service. Equal access was designed to address the specific problem of eliminating anti-competitive activities in the long distance market resulting from the LEC control of bottleneck facilities.¹⁰ An additional layer of regulation should not be imposed on a competitive industry in order to mirror the treatment of a less competitive industry. Instead, the Commission should relieve LECs from equal access obligations once there is evidence of legitimate competition that can provide customers with choice in long distance service providers. Wireless ETCs can provide a source of such competition and service provider choice for rural customers.

⁹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd. 1508, 1560 n.277 (1998).

¹⁰ Equal access was imposed on the Bell Operating Companies (“BOCs”) by the Modification of Final Judgment (MFJ), the consent decree that settled the Department of Justice’s antitrust suit against AT&T and required divestiture of the BOCs. *See United*

III. Concerns About the Portability of Support Mechanisms To Competitive ETCs Are More Appropriately Addressed In The Joint Board's Portability Proceeding.

Some commenting parties justify adding equal access as a supported service because rural ILECs provide equal access to their customers.¹¹ They claim that the current USF support system unfairly advantages CMRS ETCs because they receive portable support amounts based on incumbent LEC costs, which may include the cost of providing equal access. The issue of the amount of support CMRS ETCs should be eligible to receive should not be a factor in determining whether a service should be supported by federal universal service funding. That issue is more appropriately considered in the on-going Joint Board proceeding on universal service funding portability.¹²

States v. AT&T, 552 F.Supp. 131 (D.C.D.C. 1982); *aff'd sub nom Maryland v. United States*, 460 U.S. 1001 (1983).

¹¹ See MUST Comments in CC Docket 96-45, filed January 4, 2002 at 7-8; OPASTCO Reply Comments in CC Docket 96-45, filed January 4, 2002 at 2-5.

¹² Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process, *Public Notice*, CC Docket 96-45 (Rel. Feb. 7, 2003).

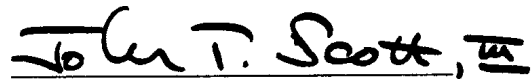
CONCLUSION

For the reasons set out above, the Commission should find that there is no legal or policy justification for imposing an equal access requirement on the CMRS industry. Imposing that requirement would violate Section 332(c)(8) as well as Section 254(c), and would only harm competition and consumers.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

John T. Scott, III
Vice President and Deputy General
Counsel – Regulatory Law

Anne Hoskins
Regulatory Counsel – Regulatory Law

Patrick Donovan

1300 I. Street, N.W., Suite 400 West
Washington, DC 20005
(202) 589-3760

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